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AUTHOR(S):

Yamamoto, Keiichiro

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On the Relation of Mill's Utilitarianism and Liberalism

Keiichiro YAMAMOTO

I

There has been a long debate about the relation of the two works, *Utilitarianism* and *On Liberty*, among those attempting to understand John Stuart Mill¹. The question is whether Mill's views in *Utilitarianism* can really coincide with those in *On Liberty*. In the former work Mill appears to hold the view that we should always maximize overall happiness for all people; in the latter, on the other hand, he holds that society can interfere with the liberty of individuals only to prevent harm to others, in which case no social interference other than prevention of harm to others can be allowed, even when such suppression is likely to produce the great overall gains in happiness. On the face of them, the two works thus look quite inconsistent with each other. As a utilitarian it might be natural for Mill to allow society to exercise its power, no matter what its justification is, over any individual so as to promote overall happiness, whereas his liberalism clearly does not permit it. For this reason, some interpreters of Mill have often taken his views in *Utilitarianism* and those in *On Liberty* to be irreconcilable, even some of whom maintain that Mill is not so much a utilitarian as 'a consistent liberal' (Ten 1991, p.236).

In this paper I shall focus this question and see how Mill himself thinks the relation

¹ All citations of John Stuart Mill's writings are from the *Collected Works*. References to *Utilitarianism*, *On Liberty* and *A System of Logic* are prefixed by *UT*, *OL* and *SL*, and by page number, e.g. (*UT*, pp.100-2). All other references to Mill's writings are by volume and page number.

of his utilitarianism and liberalism². I then suggest that Mill could remain a utilitarian. This is not because all of his arguments in *Utilitarianism* and *On Liberty* are perfectly harmonious, but because the essential parts of them in *On Liberty* are ultimately based on his utilitarianism, and could thus be consistent with those in *Utilitarianism* on the whole. First, as the question often involves the relation between the Principle of Utility and of Liberty, I will briefly see what these principles are and Mill's main arguments for the liberty principle. Second, I shall pick up C.L. Ten's arguments against Mill's utilitarian defense of liberty, which are thought-provoking, and see how the principles correlate to each other by referring to *A System of Logic*. And finally I will deal with Ten's arguments, looking at how Mill's utilitarianism could coincide with his defense of individual liberty.

II

The Principle of Utility

In the very beginning of *Utilitarianism*, Mill says that what he is trying to answer in the book is the question of 'the summum bonum' or 'the foundation of morality' (*UT*, p.205). In this respect he considers his Principle of Utility to be a principle of the good or the theory of value: 'The utilitarian doctrine is, that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable as means to that end' (*ibid.*p.234). For Mill, happiness in its simplest sense implies pleasure or the absence of pain, so happiness lies in one's pleasurable experience. But it also seems that he does not construe happiness as mere experience of pleasure; it involves some human mental activity too. Whenever he speaks of happiness in a broad sense, he thinks it 'an existence

² I am grateful to the following for helpful comments on my draft: Satoshi Kodama, Taro Okuda, Yoshinori Hayashi, Yuichiro Kawana at the Political Philosophy Society.

exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality' (ibid.p.214). It is also clear from the quotation that he introduces the notion of quality as well as of quantity to his account of pleasure and pain. He contends that we are capable of judging the quality of our pleasure or pain:

Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account.

(*UT*, p.211)

In this way, Mill holds that quality can be included in the overall value of well-being.

In another formulation of the principle, Mill appears to think of it as the criterion of right and wrong as well:

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.

(*UT*, p.210)

The passage shows Mill's moral theory, given his statement that the Principle of Utility is the foundation of morals. The criterion says that which matters is the consequence that an action brings about. Thus, the principle tells us not only that happiness is the only

desirable thing as an end, but what right or wrong actions are. Some interpreters of Mill, however, have argued that the Principle of Utility can best be understood as not a principle of rightness, but of goodness alone. But for now I shall leave this matter until the next section.

The Principle of Liberty

Now let us look at the Principle of Liberty and Mill's main arguments associated with it. *On Liberty* has generally been considered one of the classics on liberalism, which earnestly advocates the significance of individual freedom. In the first chapter of *On Liberty*, Mill says that he wants to focus his attention on 'Civil, or Social Liberty' (*OL*, p.217). His purpose in the book is 'to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion' (ibid.p.223). In this respect Mill is concerned exclusively about the practical matters. And 'one very simple principle' of which Mill speaks is the Principle of Liberty:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. (*OL*, p.223)

In other words, society can interfere with the liberty of any individual only to prevent harm to others, but cannot do so on the ground that it is for the good of that person;

namely, paternalistic justification is ruled out. Similarly, provided the person gives no harm to others, his freedom must be assured. This is true even in the case where such interference could produce the great overall gains in happiness. Despite the apparent tension between his utilitarianism and liberalism here, Mill makes it clear that his arguments for individual liberty are ultimately dependent on the Principle of Utility.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.

(*OL*, p.224)

Accordingly it is natural to suppose that Mill's defense of individual liberty be grounded on his utilitarianism.

The question, then, to be asked would be in what way the liberty principle is to promote overall happiness. For one thing, Mill suggests that observing the moral rules in general is likely to be expedient *in the long run*. In *Utilitarianism* Mill regards the Principle of Liberty as a moral rule:

The moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs.

(*UT*, p.255)

Here it is quite clear that the liberty principle is one kind of the moral rules. When Mill attempts to specify the meaning of 'utility,' he points out that according to the prevailed

use of a term 'expedient,' it means nothing but something expedient for the individual agent himself: 'When it means anything better than this, it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is expedient in a much higher degree' (*UT*, p.223). Mill then concludes that '[t]he Expedient, in this sense, instead of being the same thing with the useful, is a branch of the hurtful' (*ibid.*). It is in this sense of expediency that he is using the term 'utility'. For another and more particularly, Mill adheres to his own belief that the protection of individual liberty will eventually result in maximizing overall happiness in civilized society. On this account, he comes to stress the adoption of the Principle of Liberty whose aim is preventing the liberty of each person from being excessively suppressed by society as a moral rule.

The last point might need explaining. It is widely recognized that *On Liberty* is intended to erect a barrier against the tyranny of opinion of the majority or the 'likings and dislikings of society' over the minority in civilized society (*OL*, p.222). To carry out this objective, Mill claims that 'there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest' (*ibid.*p.225). And this sphere of action includes the 'liberty of conscience' such as the freedom of thought, feeling and opinion, 'liberty of tastes and pursuits' like planning one's life to suit his or her own character, and 'freedom to unite' without involving harm to others (*ibid.*). Mill gives us the four reasons for advocating the liberty of conscience, although he admits that expressing one's opinion, strictly speaking, might fall into the action regarding others. They are roughly as follows: since we are apt to make a mistake, an opinion we compel to silence may prove true; even the silenced opinion may have a portion of truth; even when there is a well-received opinion, its truth could not be retained without being constantly discussed; and finally if it were not for such free debate, the opinion would cease to have

its significant effect on our character and action (ibid.pp.257-8). In Mill's own view, such liberty of discussion is vital for 'the mental well-being of mankind' (ibid.p.257). Though his emphasis on the truth might be extreme, his arguments seem plausible, for were we to lead a life where we are forced to silence whatever we think and cannot cultivate our intellectual faculties, we would not consider it 'an existence exempt as far as possible from pain, and as rich as possible in enjoyments.'

With regard to the liberty of tastes and pursuits, Mill strongly believes that the cultivation of individuality is indispensable to human as a progressive being. We need, Mill suggests, freedom so that we can develop our own individuality:

As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. (OL, pp.260-1)

The passage indicates that Mill appears to regard individuality as one's having a character and as one's leading one's life for oneself. According to Mill, a person can be said to have a character when the person makes desires and impulses his own, and the expression of his own nature (ibid.p.264). In addition, individuality involves one's making a choice in one's own way: 'The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice,' and '[i]f a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode' (ibid.p.262; p.270). In this regard Mill believes that just as each

individual has different characteristics, so there should be diversity in their ways of life. If not, ‘they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable’ (ibid.270). Moreover, Mill goes on to suggest that well-developed persons can have a positive effect on others who have not yet succeeded in cultivating their own individuality, and that personal freedom and diversity of situations are the sources of both individual and social progress (ibid.pp.267-275). At this point, one might think that most of these arguments are not directly derived from the Principle of Utility alone. It is true that these, after all, depend upon Mill’s own observations and beliefs on human nature, but ultimately his basic view is that the development of individuality is ‘one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress’ (ibid.p.261). In this light his defense of liberty links his concept of happiness. I find plausible his emphasis on the cultivation of individuality from our point of view, for most of people in democratic society nowadays were likely to feel unhappy but for the opportunities to develop their own characters. And Mill’s main concern here is that people—he mostly assumes people in English society of his day—do not realize it as deeply as he does. For these reasons, Mill commits to advocating the adoption of the liberty principle, which, if adopted, enables individuals to exercise the experiments of living and cultivate their own individualities that can lead eventually to the promotion of overall happiness.

As for the application of the Principle of Liberty, Mill maintains that it ‘is meant to apply only to human beings in the maturity of their faculties’ and ‘has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion’ (ibid.p.224). For Mill the application of the principle is limited to certain conditions of human beings and their society. In addition, Mill makes it clear that giving harm to others or damaging others’ interests is a necessary

condition to justify social interference: 'it must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference' such as the case where a person succeeds in a competitive examination (ibid.p.292). For 'it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences.' So whether we are justified in actually exercising social power over any individual depends on the question of whether it promotes overall happiness (ibid.). Thus, we can find that most of Mill's arguments for the liberty principle are based upon his utilitarian standpoint.

III

C.L. Ten, however, has argued that Mill is a consistent liberal rather than a utilitarian, pointing out that 'Mill's defense of liberty is not utilitarian' (1980, p.6). His arguments are so powerful and persuasive that they would be worth dealing with. Ten argues that Mill's defense of liberty is 'fought on "the higher ground" of principle' (1991,p.220). In other words, Millian liberty principle must be on the same level as the Principle of Utility. In fact, the question concerning Mill's utilitarianism and liberalism often involves the relation of his Principle of Utility and of Liberty (e.g. see Himmelfarb 1974). Hence it would be clever to first deal with the relation of these principles in detail. I shall then show that Mill definitely thinks these principles belong to the different levels.

Ethics and Art

Mill calls the Principle of Utility 'the first principle' and contrasts it with its 'corollaries,' 'subordinate principles,' or 'secondary principles' (*UT*, p.225). As these

secondary principles are considered the corollaries, so the Principle of Liberty must also be categorized into them. Mill lays stress on the need for the adoption of these principles, because ‘whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by’ (ibid.). That is, as Mill suggests, we need the secondary principles in order to apply the first principle in our everyday lives. He explains how these principles work together in *Utilitarianism*, but no other work of Mill, I believe, provides us with as clear a picture of the relation as *A System of Logic* (1843). After the works of Ryan (1965; 1970) many have recognized the importance of the book, especially of its relation to other works of Mill such as *Utilitarianism* and *On Liberty*. I do hold the same view. It, nevertheless, seems to me that the section named ‘relation between rules of art and the theorems of the corresponding science’ in *A System of Logic* has not been paid enough attention³. I will see the relation from this perspective.

In *A System of Logic*, Mill describes ‘Ethics’ as ‘Art,’ which is distinguished from science: ‘Whatever speaks in rules, or precepts, not in assertions respecting matters of fact, is art: and ethics, or morality, is properly a porting of the art corresponding to the sciences of human nature and society. The Method, therefore, of Ethics, can be no other than that of Art’ (SL, p.943). From their dissimilarities, Mill says that ‘the definition of the end itself belongs exclusively to Art, and forms its peculiar province,’ and that ‘[e]very art has one first principle, or general major premise, not borrowed from science’ (ibid.p.949). According to Mill, the first principle proclaims the thing that is worth pursuing, and he explains the relation of Art and science as follows:

The art proposes to itself an end to be attained, defines the end, and hands it over to the science. The science receives it, considers it as a phenomenon or effect to be

³ As far as I know, the writer who highlighted the section is Koizumi (1997).

studied, and having investigated its causes and conditions, sends it back to art with a theorem of the combinations of circumstances by which it could be produced. Art then examines these combinations of circumstances, and according as any of them are or are not in human power, pronounces the end attainable or not. The only one of the premises, therefore, which Art supplies, is the original major premises, which asserts that the attainment of the given end is desirable. Science then lends to Art the proposition (obtained by a series of inductions or of deductions) that the performance of certain actions will attain the end. From these premises Art concludes that the performance of these actions is desirable, and finding it also practicable, converts the theorem into a rule or precept. (SL, pp.944-5)

Accordingly, the relation of Art and science about which Mill is talking here can be seen as this: the art provides the end, while science the means to that end. In this regard ethics is Art utilizing the means science provides for the attainment of its end. But Art does not just present an end to be pursued; it examines whether the means to that end is achievable and, if possible, makes it a practical rule.

Now, think of the relation between the Principle of Utility and its corollaries. According to Mill, 'the general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings; in other words, that the promotion of happiness is the ultimate principle of Teleology' (ibid.p.951). The Principle of Utility is, therefore, the first principle of Art, playing the role of justifying rules or precepts, which include the moral rules in *Utilitarianism*. These rules or precepts are equivalent to the secondary principles in that they are all derived from the first principle and, as Mill noted, are 'principles to apply it by.' On this account the Principle of Liberty is also one of these moral rules.

The judge and the legislator

In the matter of practice, Mill goes on to illustrate the functions of these principles by using the different status of ‘a judge’ and of ‘a legislator’ in *A System of Logic*. Mill first describes the role of the judge: ‘The judge is not called upon to determine what course would be intrinsically the most advisable in the particular case in hand, but only within what rule of law it falls; what the legislature has ordained to be done in the kind of case, and must therefore be presumed to have intended in the individual case’ (*SL*, p.944). So the judge himself cannot make up the rules. Since ‘[t]o the judge, the rule, once positively ascertained, is final,’ all he can do is follow the rules or the secondary principles (*ibid.*). Next Mill explains the position of the legislator:

As the judge has laws for his guidance, so the legislator has rules, and maxims of policy; but it would be a manifest error to suppose that the legislator is bound by these maxims in the same manner as the judge is bound by the laws, and that all he has to do is to argue down from them to the particular case, as the judge does from the laws. The legislator is bound to take into consideration the reasons or grounds of the maxim. (*SL*, p.944)

This passage shows that the legislator is assumed to play exactly the same role as the first principle. In this manner Mill seems to hold that there are two levels—the level of the judge and that of the legislator—in applying the first principle⁴.

But it should also be noted here that Mill reminds us there are some exceptional

⁴ Uchii (1988) has already suggested that the Principle of Liberty is directed exclusively at practical issues and the Principle of Utility at theoretical ones. Crisp (1997), though he does not pick up the status of the judge and the legislator, has also shown that Mill has a multi-level view (see especially chapter 5).

cases in which the judge can appeal to the first principle in spite of the difference in the levels. Mill says that ‘the judge has nothing to do with those of the law, except so far as a consideration of them may throw light upon the intention of the law-maker, where his words have left it doubtful’ (ibid.). This must be what Mill has in mind when he writes the following passage in *Utilitarianism*.

If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible. Though the application of the standard may be difficult, it is better than none at all: while in other systems, the moral laws all claiming independent authority, there is no common umpire entitled to interfere between them. [...] We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. (UT, p.226)

Because the Principle of Utility, ‘the ultimate source of moral obligation’, plays the role of justifying the moral rules, such justified rules come to have moral obligations which every person is bound to observe as in the case of the judge. But when two of these rules or obligations are to come into conflict with each other, a person in the position of the judge is allowed to consult the first principle so that he can know which one to follow. Mill, that is to say, intends to leave room for this possibility. ‘To the judge, the rule is final’ unless this happens. As for the Principle of Liberty, it is the moral rule which specifies the legitimate limit of social interference with a person’s freedom and to which society as the judge must conform itself. The legislator has approved the adoption of the liberty principle because it helps the promotion of happiness more easily attained. One can see the relation between the Principle of Utility and of Liberty in this way. Mill clearly considers these principles to belong to the different levels, and the Principle of

Utility and of Liberty, therefore, cannot be on the same ground. Moreover, this explains that there are, as we have seen, some places where his arguments in *On Liberty* seem not to be directly derived from the first principle, because Mill concentrates his attention on the plea for adopting *the secondary principle*.

Mill's utilitarianism

Insofar as the relation of the first principle and the secondary ones is concerned, it can be said that the Principle of Utility works *indirectly* from the point of view of the judge except for a few unusual situations. For this sort of interpretation there have been quite a few arguments among those who try to make Mill's moral theory clear. Here I am not able to deal with all of them thoroughly, but a few words on them might help clarify the relation between the first principle and the secondary ones.

Some have pointed out that Mill's moral theory rests upon the rules, given his emphasis on the secondary principles (e.g. Urmson 1953; Riley 1998). Others have further argued that the Principle of Utility can best be interpreted as not the theory of right and wrong but of the good (e.g. Brown 1973)⁵. Those who agree in large part with this focus on the characteristics of Mill's application of the first principle, and suggest that Millian view is an *indirect* version of utilitarianism (e.g. Sumner 1979; Gray 1991; Lyons 1994). That is, '[i]n that sort of theory, utilitarian reasoning applies to moral principles directly but regulates conduct only indirectly' (Lyons 1994, p.17). This might capture the important points in Mill's view and could be the most plausible interpretation. For Mill's statement, for instance, that '[w]e must remember that *only* in these cases of conflict between secondary principles is it requisite that first principles should be appealed to'

⁵ These arguments involve versions of utilitarianism such as rule-utilitarianism and act-utilitarianism (see Berger 1984, pp.64-7; Lyons 1994, pp.15-8; Crisp 1997, pp.95-132; Donner 1998, pp.278-82).

seems to support it (emphasis added). However, the problem for this interpretation would be that most of these writers take it for granted that the Principle of Utility plays only the role of the theory of goodness. Strictly speaking, it is also apparent that Mill admits there are such exceptional cases where the moral rules or the secondary principles are not applicable or come into conflict that a person as the judge may well appeal to the Principle of Utility *directly*. In other words, there would be the rare cases in which the first principle is in charge of regulating conduct. So it remains doubtful whether Mill sees the Principle of Utility as the theory of the good, not the criterion of right and wrong. In fact, the passage cited before (i.e. *UT*, p.210; p.234) clearly shows that Mill construes it as the criterion as well as a principle of the good⁶. The first principle, on my account, has both roles and is intended to reconcile the conflict among the secondary principles in most instances.

Besides, Mill does not fall into the ‘rule worship’ (see Smart 1973, p.10). This is because Mill contends in *A System of Logic* that ‘[t]he rules of art do not attempt to comprise more conditions than require to be attended to in ordinary cases; and are therefore always imperfect’ (*SL*, p.945). In *Utilitarianism*, likewise, Mill says that ‘[t]he corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on’ (*UT*, pp.224-5). In this way Mill avoids concluding that the rules are in any case absolute. Nor does Mill regard the rules as only ‘rules of thumb,’ which can easily be overridden in the name of the immediate promotion of overall happiness. Were the moral rules or the secondary principles he speaks of just the rules of thumb,

⁶ This kind of interpretation of Mill can be found in Berger (1984) and Crisp (1997). But at this point I also doubt whether it is entirely adequate to account Mill’s view as ‘act-utilitarianism,’ which Crisp thinks possible, for Mill seems not to be concerned with these versions of utilitarianism.

there would be no telling that his attitude towards defending individual liberty in *On Liberty* is genuine. For example, we can see how Mill is determined to insist on the protection of individual freedom against the illegitimate interference:

The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign. (OL, p.224)

The words, ‘absolute’ or ‘sovereign’ in this passage are often considered the marks of Mill’s liberalism. Indeed, C.L. Ten seems to see that the Principle of Liberty has some absolute characteristic, and points out that Millian defense of liberty in this sense shows his liberal standpoint. Taking the relation between the first principle and the secondary ones into consideration, Ten strongly argues that at the level of the first principle one must count the illiberal attitudes of the majority in society:

But the argument about whether the principle of liberty should be adopted in the first place must be an argument about whether its adoption is the best strategy for maximizing happiness. At *this* level, all preferences are relevant. Since Mill’s arguments for the principle of liberty are conducted at this level, he cannot discount the strong anti-liberal preferences of the majority. (Ten 1991, p.219)

Here Ten is assuming preference-utilitarianism, a version of utilitarianism, but the word ‘preferences’—presumably he is thinking of *external preferences*⁷—could be replaced by

⁷ The arguments concerning external preferences are found in Dworkin (1978, ch.9).

the word 'distress,' 'displeasure,' or 'dislike', for he argues that 'Mill discounts certain types of distress and certain types of pleasure, and indirect utilitarianism does not seem to be able to account for this' (ibid.p.222). Furthermore, according to Ten, the argument that following the secondary principle will promote overall happiness in the long run does not help either. This is because '[t]here is a threshold to be crossed before the balancing of utilities, to determine whether the general welfare will be promoted, can be applied. The threshold is that the individual's conduct *harms* others, or "affects prejudicially the interests of others"' (ibid.p.215). As far as these are concerned, Ten points out, 'Mill's liberty principle is inconsistent with utilitarianism' (1980, p.42). His arguments seem too strong to be refuted. Still, there can be a chance, at least from Millian perspectives, that the tension between Mill's utilitarianism and liberalism turns out to be superficial, which I think is the case, so that in the next section I would like to examine this point.

IV

According to Ten, 'Mill is setting up a principle of non-interference which is deliberately insensitive to such utilitarianly relevant considerations as the intensity and extent of the distress experienced by members of the public as a result of activities which fall within the "self-regarding concerns" of individuals' (Ten 1991, p.214). As we have seen, for the cultivation of individuality any person in civilized society needs the sphere of action in which he can freely develop his own nature unless the practice involves harm to others. This sphere involves what Mill calls 'self-regarding concerns of individuals,' where 'the public has no business to interfere' (*OL*, p.285). Ten's point here is that Mill seems not to take such distress into account when advocating the self-regarding concerns of individuals. Since his point involves Mill's notion of 'harm' and arguments associated with a

self-regarding sphere, I shall look at these first, and then show there could be consistencies in Mill's utilitarian defense of individual freedom.

Harm to others

In *On Liberty*, we can get a rough picture of what Mill considers to be harmful acts:

This conduct consists first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labours and sacrifices incurred for defending the society or its members from injury and molestation. (OL, p.276)

Without executing these conducts, a person can be punished by 'law' or, if inapplicable, by 'opinion' (ibid.). Here harmful acts involve the violations of someone's rights. Recall Mill remarked that he did not use 'the idea of abstract right, as a thing independent of utility' in *On Liberty*. Thus, the rights to which Mill refers are utilitarian rights. In *Utilitarianism*, Mill describes what it means to have a right: 'To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility' (UT, p.250). What, then, does society have to protect? The answer given by Mill is the interest of 'security' (ibid.). So vital is the interest of security that Mill takes it for granted that every human does without it and the Principle of Utility justifies its protection. Mill also holds that '[w]herever there is a right, the case is one of justice, and not of the virtue of beneficence' (ibid.p.248). What he means by this is his distinction between 'perfect obligations' and 'imperfect obligations.' According to Mill, perfect obligations are 'those duties in virtue of which a correlative right resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right'

(ibid.p.247). And the cases of justice always involve perfect obligations:

Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation. (UT, p.255)

Every person in a society is subject to these moral rules, and in case he violates one of them, he can be said to harm others and given a legal punishment accordingly. When a person violates his imperfect obligation, Mill thinks that he can be punished by opinion. This is because Mill admits there are the cases in which the ‘acts of an individual may be hurtful to others [...] without going the length of violating any of their constituted rights’ (OL, p.276). These cases are, for instance, ‘to give evidence in a court of justice; to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence’ and so forth (ibid.pp.224-5). These must be the cases where an inaction, or, as Mill implies, ‘perceptible hurt to any assignable individual’ except for the agent himself is so serious in terms of the interest of security that the Principle of Utility counts it among harm to others and justifies the social restraints (ibid.p.282). In this way Mill sees there is a close connection between the vital interests and the cases of justice.

The above quotation concerning the rules of justice (i.e. UT, p.255) also shows why the Principle of Liberty appears not just ‘rules of thumb.’ Mill recognizes there are ‘certain classes of moral rules,’ which could be classified into the rules of justice and customary moral rules. Sometimes when he is speaking of the moral rules, he implies the

rules of customary morality (e.g. not telling a lie). These rules might bear mostly imperfect obligations and be thought of as the rules of thumb. In contrast, for Mill the rules of justice cannot be just the rules of thumbs, because they are of great importance in terms of their utility and 'stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others' (*UT*, p.259). As a matter of fact, the citation is immediately followed by the statement, '[t]he moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom).' This explains that Mill regards the Principle of Liberty as one of the rules of justice, and why it is assumed to absolutely govern society's exercising its power over individuals. Yet it should be noted that the meaning of the word 'absolute' here must be the same meaning as is the case of the judge: in the sense that from the judge's point of view the rules of justice look as if they were absolute because he must observe them almost all the time. On the contrary, since Mill is no more bound to the rules of justice than the legislator is, he allows an individual to violate one or several of them when these rules or obligations come into conflict: 'though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice' (*ibid.*). So to the legislator, even the rules of justice are by no means absolute. As we have seen in the relation between the first principle and the secondary ones, the Principle of Utility is to justify these rules of justice and customary morality. At this point, one might wonder if the rules of justice and of customary morality abridge each individual in civilized society of his freedom and limit his experiment of living to cultivate his individuality. Mill thinks they do not: 'To be held to rigid rules of justice for the sake of others, develops the feelings and capacities which have the good of others for their object' (*OL*, p.266). Those rules that prohibit an action involving harm to others are also useful in the cultivation of individuality. Harming others thus involves the infringement

of the justified rules of justice and of customary morality.

The self-regarding sphere and distress

The self-regarding sphere without involving harm to others, therefore, is where neither legal nor social obligations are involved. Mill, indeed, holds that '[w]hat are called duties to ourselves are not socially obligatory [...] The term duty to oneself, when it means anything more than prudence, means self-respect or self-development' (*OL*, p.279). This can be explained by 'the Art of Life' in *A System of Logic*. As Ryan has revealed, Mill thinks that there are several points of view to evaluate any human conduct. These points of view, which Mill calls the three departments, are 'Morality,' 'Prudence or Policy,' and 'Aesthetics,' and each corresponds to 'the Right,' 'the Expedient,' and 'the Beautiful or Noble' (*SL*, pp.949-50)⁸. Mill considers them to be 'Art' or 'Ethics,' and calls them 'the Art of Life.' So they have the first principle which 'must determine whether the special aim of any particular art is worthy and desirable, and what is its place in the scale of desirable things' (*ibid.*). The principle, of course, is the Principle of Utility. Mill thus ties harm to others to the department of Morality and leaves the self-regarding sphere in the rest of the departments.

Whenever the self-regarding sphere is at stake, Mill, as Ten argues, seems to hold that distress is not enough to constitute a harm. What Ten means by the term distress is 'the distress of the "religious bigot" at the "abominable worship" of others, or that of the Sabbatarian at Sunday amusements and entertainments, or other similar forms of distress

⁸ The names of the three departments vary throughout Mill's works, though their accounts remain roughly the same. They first appear in 'Bentham' (1838), where they are called 'Moral aspect,' 'Sympathetic aspect,' 'Aesthetic aspect' (*CW* X, p.112). In *Utilitarianism*, Mill names them 'Morality,' 'Expediency,' and 'Worthiness' (*UT*, pp. 246-7).

occasioned by the knowledge that others are engaging in activities which one regards as wrong, perverse, or otherwise unacceptable' (Ten 1991.p.213). Ten suggests that these forms of distress should be considered harm to others and thus be placed into the department of Morality from Millian point of view. Mill, albeit his account of happiness as pleasure or the absence of pain, appears to ignore such distress. Ten cites a few examples found in *On Liberty*: the strength of the Muslim's disgust at the eating of pork and the Sabbatarian's distress at Sunday amusements (*OL*, pp.284-6). On these examples Mill maintains that 'the public has no business to interfere' with individual freedom. Ten goes on to examine the claim 'that Mill arrives at his conclusion by balancing the utility of interfering with liberty against the utility of non-interference and by discovering that the latter always outweighs the former' (Ten 1991, p.213). He then points out there are some non-utilitarian views in Mill: 'Mill believes that morality-dependent distress can be very great' and 'Mill's rejection of these forms of distress as a proper basis for social interference with the liberty of individuals is stated with a peremptoriness which would be inexplicable if his case for liberty were dependent on the contingencies and uncertainties of the balancing process' (ibid.p.214). By the balancing process, Ten means 'balancing the utility of interfering with liberty against the utility of non-interference' (ibid.p.213). For Ten these examples show the fact that Mill does not see these kinds of distress as harm to others. And Ten holds that 'Mill does indeed adopt the balancing approach in cases where conduct harms others, and *contrasts* that approach with the requirement that "there should be perfect freedom" to perform actions not harmful to others' (ibid.p.215).

Ten seems to make a remarkably acute observation about Mill's defense of individual freedom. His emphasis concerning these Millian views lies in the fact that Mill does not hold that distress is enough to constitute a harm to others: 'the question is precisely whether these feelings in themselves are what the utilitarian would count as a

type of harm' (ibid.p.229). Ten then stresses that the fact that the minority's mere existence distresses the majority in community is 'as brute a fact as any what the utilitarian will find,' and points out that 'these feelings of the majority may be irrational from various points of view, but what is unclear is why they are irrational *from the utilitarian point of view* [...] the utilitarian standard does not justify us in completely ignoring the distress caused by false beliefs' (ibid.pp.228-9). It might be true that for Mill distress is not enough to constitute a harm while he seems to admit the distress of the majority can be genuine. Does Mill then adopt 'considerations that are external to utilitarianism' in order to defend individual liberty as Ten suggests (ibid.p.223)?

Mill's utilitarianism and liberalism

But a few things could be said upon this matter. To begin with, recall that Mill introduces the notion of quality as well as of quantity to the scale of well-being. In spite of the difficulty in understanding his distinction between them, when talking about that quality, he clearly holds that pleasurable experiences are different in their quality or kind: 'It is quite compatible with the principle of utility to recognise the fact, that *some kinds* of pleasure are more desirable and more valuable than others' (*UT*, p.211, emphasis added)⁹. In the scale of quality, pleasurable experiences are ranked as higher or lower. And Mill holds that one 'must determine whether the special aim of any particular art is worthy and desirable, and what is its place in the scale of desirable things.' The scale, as we have seen, is given by the experienced: 'the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them, must be admitted as final' (ibid.p.213). So Mill suggests that the competent persons, who he may assume are self-developed individuals in *On Liberty*, should decide where to place desirable things on

the scale only in terms of their significance for human happiness. He also thinks it a bare fact that they 'do give a most marked preference to the manner of existence which employs their higher faculties' (ibid.p.211). The higher faculties, Mill implies, include intellectual or mental ones, and the manner of existence employing them is considered a higher pleasure. Here we can see the link between his defense of individual liberty and the experienced: in order to experience various pleasures and enjoy that manner of existence via experiment of living, humans, who are capable of using the higher abilities, need freedom. In short, if it were not possible for any person to cultivate his individuality freely, he could no longer enjoy an existence of a higher pleasure. This pleasurable experience, thus, occupies a higher place on the scale of quality, and is so essential to the promotion of human happiness that Mill makes an every effort to protect the sphere of action that makes it possible.

On this account Mill stresses the adoption of the liberty principle as a moral rule. Suppose there were a right protecting people from feeling distress. Each individual could not exercise his experiment of living to cultivate individuality, since society constraints him every time he tries to do so, on the grounds that his action causes people to feel distress. According to Mill, the suppression based on people's mere distress does not bring about something valuable in the light of human happiness: 'But to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable' (*OL*, p.266). Mill even thinks such restraints are the 'evil' and 'gross usurpations upon the liberty of private life' (ibid.p.284; p.287). Here Mill also seems to distinguish good or happiness from mere displeasure, which shows, just as Ten points out, that mere displeasure or distress is not enough to constitute a harm to others. Given his account of happiness this could be explicable. That is, social interference with personal freedom

⁹ For the various interpretations of Mill's concept of quality and of quantity, see Donner (1998).

produces more serious unhappiness than one's causing distress to others in that pleasurable experiences or the modes of existence associated with cultivating one's own individuality are higher kinds and more indispensable to human happiness; otherwise Mill's considerable efforts to show why individuality matters most in *On Liberty* would be inexplicable. In this way he can have utilitarian reasons to lay little weight on any forms of distress or displeasure. Mill might even consider that oppressing individual liberty based on mere distress only promotes people's content, not happiness, for he sees the idea of happiness and that of content are quite different (*UT*, p.212).

Still, this may require further explanations. Ten points out that 'there is massive evidence that many of them [those who have experienced liberty] show no similar tenderness towards the liberties of others' (Ten 1991, p.220). This could happen. Should the experienced show this tendency, they might not adopt the Principle of Liberty. Now, remember the status of the legislator. I believe that the experienced can be seen as the legislator. The legislator has to take everything into account so as to justify the moral rules, which everyone in a society must obey. In other words, the legislator is to consider *public utility*. Mill distinguishes public utility from private utility in *Utilitarianism*:

The multiplication of happiness is, according to the utilitarian ethics, the object of virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words, to be a public benefactor, are but exceptional; and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to. (*UT*, pp.219-20)

What Mill implies here by public utility would remain rather ambiguous, but as he uses the term 'the public interest' afterwards, one may fairly conclude that public utility means

the public interest including the vital interests of security. It might also be unclear whether Mill separates the matters of politics from those of morality, as contemporary political philosophy seems to do, on the examples of the judge and the legislator. I believe he does not. But it can still be understood that those who are in the position of the legislator must respect the public interest. Moreover, Mill maintains that one must be impartial: 'As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator' (ibid.p.218). For this reason, he considers the golden rule of Jesus of Nazareth to be 'the complete spirit of the ethics of utility,' and calls this sort of impartiality ideal (ibid.). In regard to this point, Mill holds that the maxims of equality and impartiality 'are included among the precepts of justice,' so that they turn out to be the rules of justice (ibid.p.257). But Mill even persists in his claim that these maxims are 'involved in the very meaning of Utility, or the Greatest-Happiness Principle' (ibid.p.257). Although the maxims of equality and impartiality can no more bind the legislator than the rules of justice can, the legislator is still required to be impartial by the first principle¹⁰. So, for Mill, they are bound to show 'similar tenderness towards the liberties of others,' because those who are in the position of the legislator and recognize that the development of individuality is indispensable to human happiness must not only consider public utility but also be impartial enough.

As regards this, the liberty principle gives every person an equal right to the self-regarding sphere, where he can express his displeasure without any constraint. Mill clearly admits that one's activities within his self-regarding sphere may affect the feelings of others, and result in causing distress to them: 'If he displeases us, we may express our

¹⁰ One might wonder how exactly the Principle of Utility encompasses these maxims. For a value-pluralist like Berlin (1969), the value of equality is independent of any other values including utility. But Mill does not accept this sort of value-pluralism. For the arguments of pluralism and equality, see Kymlicka (2002).

distaste, and we may stand aloof from a person as well as from a thing that displeases us' (*OL*, p.277; p.279). Everyone can have this right to act on his mere displeasure or distress, but it is not enough to constitute a harm and never justifies the social coercion. Besides, Mill suggests that when society interferes with the liberty of individual, 'the odds are that it interferes wrongly, and in the wrong place' (*ibid.*p.283). Considering the odds and the significance of individuality, he supports the adoption of the liberty principle.

In summary, the experienced recognize that the development of individuality is an essential part of human happiness, placing the manner of existence that enjoys it higher on the scale of well-being; as the legislator, they are required to be impartial by the Principle of Utility and must concern the public utility which includes the vital interests of humans and 'the permanent interests of man as a progressive being'; all things considered, they decide to adopt the Principle of Liberty, which rules out social interference based on mere distress and protects any person's self-regarding liberty. They rule out the suppression since it brings about more serious unhappiness than one's causing distress or displeasure to others, namely, 'for the good of mankind' (*ibid.*p.279). This is, I believe, that which Mill thinks of on the relation between his utilitarianism and liberalism. Mill's defense of individual liberty, therefore, could remain utilitarian.

So far Ten might accept many of these points, for he also seems to claim that Mill considers the cultivation of individuality to be 'the highest value' on the scale of well-being (Ten 1980, p.77). He, nevertheless, contends that 'until we have a clearer picture of how liberty and individuality rank in Mill's order of happiness, and the reasons for the ranking, we cannot claim that he is a straightforward utilitarian'; Mill's utilitarian defense of liberty 'cannot be such as to make the doctrine indistinguishable from rival non-utilitarian theories' (*ibid.*). As a result, he states that 'I call it substantially non-utilitarian' (Ten 1991, p.236).

I believe his conclusion could be irrelevant. First, it may be true that when we actually determine whether to allow society to exercise its power over an individual, we are required to consult the Principle of Utility because the decision itself depends on it, not the Principle of Liberty, which might leave us uncertainty. But Mill's arguments in *On Liberty* may fairly be clear: we should exclude people's mere distress or displeasure from harm to others and rule out paternalistic justification when the actions never infringe legal or social obligations in order that each of us can freely cultivate individuality. So Millian ways of ranking is simply that the self-regarding actions are far more important in terms of human happiness than the social interference based upon either people's mere distress or paternalistic justification. Second, as we have seen, Mill does not defend the liberty of individual independent of his concept of happiness. Mill confesses his belief regarding this in *Autobiography*:

I never, indeed, wavered in the conviction that happiness is the test of all rules of conduct, and the end of life. But I now thought that this end was only to be attained by not making it the direct end. Those only are happy (I thought) who have their minds fixed on some object other than their own happiness [...] The other important change [...] was that I, for the first time, gave its proper place, among the prime necessities of human well-being, to the internal culture of the individual.

(*CWI*, pp. 145-7)

Because of the changes in his views on the notion of happiness, he earnestly advocates the individual freedom which enables people to develop 'the internal culture.' Though Mill seems to treat it ambiguously as if it were in itself the ultimate end in *On Liberty*, unlike contemporary liberals inclined to defend the liberty of individual apart from any utilitarian reasoning, he does not adhere fundamentally to the value of freedom as such or

as something independent of utility. It may also be true that Mill's views on human nature perhaps prove to be wrong, or the experienced do not always recognize the significance of individuality as he does. But these arguments have nothing to do with the claim that he is not a utilitarian. Finally, Ten seems to treat the liberty principle as though it were a side-constraint (see Nozick 1977, pp.28-42; Ten 1991, p.235). Obviously, the Principle of Liberty is by no means absolute, for a side-constraint trumps *any* welfare values whereas the principle is dependent on them: it only protects a utilitarian right; it is only applicable in civilized society where 'free and equal discussion' can be allowed. If Ten understands the word 'absolute' in this strong sense, then Mill does not see the liberty principle has *that* absoluteness. The principle, nevertheless, is absolute to the extent that it provides each person with the right which rules out the social restraints based on mere distress or paternalistic reasons. All these things considered, I believe that we could never say Mill is not a utilitarian. Instead, we may be able to conclude that Mill's defense of the right of freedom within the framework of utilitarianism is highly sophisticated, but is not so strong as a side-constraint¹¹.

If my interpretations of Mill are accurate and the points I have made are plausible, they could show that Mill remains a utilitarian, and that his defense of personal liberty within the framework of utilitarianism is so highly elaborated that it is still worth paying attention. In closing, I would like to point out that there seem some inconsistencies in Mill's liberal attitude, which might also show how strongly Mill commits to his utilitarianism. On the one hand, Mill does not allow offences to others such as the

¹¹ A side-constraint, however, seems to have some problems too. For instance, if there are many side-constraints and one of them should come into conflict with other side-constraints, it would be difficult to reconcile the conflict. For the problems with a side-constraint, see Gray (2000, especially pp.82-5).

religiously induced bigotry to justify the social interference; on the other hand, he accepts that there are conducts ‘which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited’ (*OL*, p.295). Mill calls these ‘offences against decency’—he perhaps assumes something like a flasher (*ibid.*). But if these conducts are considered harm to others, it becomes difficult to see why the distress as Muslims feel toward one’s pork eating is not enough to constitute a harm¹². For just as Mill appeals to English sense of decency, so Muslims should be entitled to appeal to their sense of decency and can make one’s pork eating banned. Moreover, Mill does not embrace the freedom to sell oneself as a slave: ‘The principle of freedom cannot require that he should be free not to be free. It is not freedom, to be allowed to alienate his freedom’ (*ibid.*p.299). For Mill, however, it would be more consistent not to prohibit the slave contract, because he admits the freedom to contract when the parties are fully informed and not deceived. Probably his reasoning on these cases might be that human happiness will be more promoted if these conducts are suppressed. Here Mill might have been so absorbed in his utilitarianism that he could not help being an inconsistent liberal. In this way there are, as far as I can see, some problems in his arguments in *On Liberty*, but his arguments in the works of *Utilitarianism* and *On Liberty* on the whole could consistently be utilitarian.

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¹² For the difficulties associated with Mill’s offences against decency, see Wolff (1998).

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(Keiichiro Yamamoto, a first year doctoral student at Kyoto University)